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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,514	11/02/2000	Jeffry Jovan Philyaw	PHLY-25,509	6936

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EXAMINER

POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
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2145

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/705,514

Applicant(s)

PHILYAW, JEFFRY JOVAN

Examiner

Melvin H. Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached office action</u> . |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/02/06 has been entered.

Specification

2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it includes legal phraseology and other phrases to be avoided. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-11 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 1-11 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a definition and explanation of the term "releasing the control signal," and its relationship and difference, if any, to "occurrence of a control signal." It is also unclear if there are steps subsequent to release of the control signal, and its relation to providing/receipt of the signal.

8. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim

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term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “location” in claim 1 is used by the claim to mean “web address”, while the accepted meaning is “relationship to local or global surroundings, i.e. geographic area or items within the area.” The term is indefinite because the specification does not clearly redefine the term.

9. Claims 1-11 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the process of fulfilling the limitation “will attract the consumer’s attention.”

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-3, 6-8, 10, 11, and 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner et al. (6,600,496).

12. For claim 1, Wagner teaches a method (abstract) for facilitating computer based access to a location on a network (col. 1, line 1 – col. 3, line 25; col. 8, lines 35-45) by a consumer witnessing a presentation broadcast to the consumer over a broadcast network that is operable to

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make available to a plurality of consumers the presentation broadcast (Fig. 2), comprising the steps of:

- a. Providing a visual cue during the presentation broadcast apparent to the consumer and indicative of a relationship between the visual cue and the presence of the location on the network that will attract the consumer's attention (col. 6, lines 30-55), the visual cue provided subsequent to the occurrence of a control signal that is part of the presentation broadcast and which control signal is in association with the visual cue (col. 6, lines 20-30); and
 - b. Releasing the control signal (col. 7, lines 10-16; establishing the connection), the step of releasing occurring during the presentation broadcast (col. 5, lines 40-50), and wherein a computer (Fig. 1, #2) having an input device responsive to the control signal (Fig. 1, #4) can be controlled such that the control signal can both be recognized by the input device (Fig. 2) and control information contained in the control signal can be extracted therefrom to enable and control the computer to access the location on the network upon the appearance of the visual cue and receipt of the control signal during the presentation broadcast (col. 6, lines 20-55), which control is facilitated from the presentation broadcast with no user intervention (col. 7, lines 10-35).
13. For claim 2, Wagner teaches attracting the consumer's attention to the computer for interacting with the location on the network in association with the access thereto (col. 6, lines 30-45).
 14. For claim 3, Wagner teaches that the step of providing a visual cue precedes the step of releasing the control signal (col. 7, lines 30-35).

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15. For claim 4, Wagner teaches that the step of releasing the control signal precedes the step of providing a visual cue (col. 7, lines 30-35).
16. For claim 5, Wagner teaches that the steps of providing the visual cue and releasing the control signal occur simultaneously (col. 7, lines 30-35).
17. For claim 6, Wagner teaches that the steps of providing the visual cue and releasing the control signal occur within a defined interval of time (col. 7, lines 30-35).
18. For claim 7, Wagner teaches animating the visual cue during its appearance wherein the animation is accompanied by the control signal (col. 6, lines 30-45).
19. For claim 8, Wagner teaches detaching one or more moving segments from a stationary portion of the visual cue, and traversing a path with each detached segment about the stationary portion of the visual cue to a predetermined position adjacent thereto (col. 6, lines 30-45).
20. For claim 10, Wagner teaches that the stationary portion of the visual cue forms an iconic figure and the moving segment resembles an element of said iconic figure (col. 6, lines 30-45).
21. For claim 11, Wagner teaches that the step of releasing a control signal comprises the step of providing an audible sound signal as a part of the broadcast having a recognizable characteristic that is identifiable each time it occurs by the input device on the computer, the sound signal comprising the control signal (col. 3, lines 20-50; radio frequency link).
22. For claim 15, Wagner teaches that the step of releasing a control signal comprises the step of providing a light signal having a recognizable characteristic that is identifiable each time it occurs by the input device on the computer, the light signal comprising the control signal (col. 3, lines 20-50; infrared link).
23. For claim 16, Wagner teaches that the visual cue includes a logo (col. 6, lines 30-45).

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24. For claim 17, Wagner teaches that the presentation broadcast witnessed by the consumer includes a program having audio and video content (col. 3, lines 50-65).

25. For claim 18, Wagner teaches that the presentation broadcast witnessed by the consumer includes a broadcast communication having audio and video content (col. 3, lines 50-65).

26. For claim 19, Wagner teaches that the presentation broadcast witnessed by the consumer includes a live presentation (Fig. 4, #9; "Live from Lincoln Center").

27. For claim 20, Wagner teaches that the presentation broadcast witnessed by the consumer includes a recorded presentation (Fig. 4, #4; "Wings").

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner as applied to claims 1, 7, 8 above.

30. For claim 9, Wagner does not expressly disclose that the stationary portion of the visual cue forms an alphanumeric character and the moving segment resembles a punctuation mark. Instead, it shows an example embodiment wherein the stationary portion is the body of an icon, while the moving segment is the icon's appendages.

31. However these differences are only found in the non-functional data stored on the article of manufacture. Data identifying a particular look of the animation is not functionally related to the substrate of the article of manufacture. Thus, this descriptive material will not distinguish the

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claimed invention from the prior art in terms of patentability, *see Cf. In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

32. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use any drawing in the animation as shown in Wagner because such data does not functionally relate to the substrate of the article of manufacture and merely labeling the data differently from that in the prior art would have been obvious matter of design choice. *See In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

Conclusion

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They regard further related teachings on web TV and other interactive broadcasts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887.

The examiner can normally be reached on 8:00-4:30 M-F.

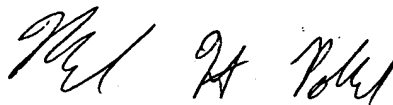
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melvin H Pollack
Examiner
Art Unit 2145

MHP
05 January 2007

A handwritten signature in cursive script, appearing to read "Mel H Pollack", is located in the lower right quadrant of the page.